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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,078	08/06/2003	Joseph E. Peck	5150-79600	7220

7590 05/21/2007

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EXAMINER	
VU, TUAN A	

ART UNIT	PAPER NUMBER
2193	

MAIL DATE	DELIVERY MODE
05/21/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/635,078	Applicant(s) PECK, JOSEPH E.
	Examiner Tuan A. Vu	Art Unit 2193

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *none*.
   Claim(s) objected to: *none*.
   Claim(s) rejected: *1,3-7,9,10,12-24,26-28,30-32,34-36,38 and 39*.
   Claim(s) withdrawn from consideration: ———.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

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Continuation of 11. does NOT place the application in condition for allowance because: In regard to the observation that the Specifications is clear on the objected language of 'successively larger', it is noted that the Specifications does not establish a fixed scenario by which using user input, successive enlarging of the remaining code portion does happen; notably when the endeavor is to convert all this portion (until there is no more of it) into a deployable config program to enable total deployment as purported by the Invention. By reciting that the first portion via iteration does get bigger in size, it does not necessarily entail that this first portion as recited does reach an end. It is deemed inappropriate to end a method claim with a prospect that code gets bigger without further conveying a understandable exit to this iteration. The Specifications is clear in that it provides 2 alternatives enabling code increase and/or decrease, but none of which is described an exclusive process by which all software code would be converted into HW config program. The claim does appear to enforce an increasing code scenario without explaning what would become smaller to reach an end, hence is lacking a enablement foundation. The claim remains non-commensurate with the Specifications, and stating that the recited 'successively larger' is novel would be like admitting that an iteratively increased size of code (to debug without prospect of ending?) is novel, which is not credible in the line of statutory subject matter. In regard to the observations that Tseng does not teach steps a-d of claim 1, the deficient claim language has obliged the prosecution to interpret a different scenario than that proffered by the Applicant; that is, for an incremental moving from one form into another form, every debug process using regression, modification and rerun would read on the steps as recited as a) to d); and Tseng's post simulation is but one such debug process. The argument is not convincing. There is no clear transition of code from first program into a HW code from the claim to enforce that the first program as it get converted becomes smaller, such that the argument explaining about moving of code to deployable code would not be persuasive -- based on the Claims Objections that are still maintained. The recited 'intended for deployment on a programmable hardware element' is not having weight until it is explicit in terms of steps actions, and according to the body of claim 1, the increased size of the first program is not sufficient to provide the deployment aspect any more weight than a mere Sw/HW simulation, debug and execution of function by the simulated HW portions by Tseng, be it a FPGA or PHE, whether this simulation be in various mode, or post-simulation. The rejection has provided explanation in the mapping of each limitations with cited parts of Tseng, and based on the claim interpretation from the above, Tseng has met the steps of claim 1, i.e. the term deployment not having weighted more than it is recited via the steps a-d of the claimed debug method. Claim 27 amounts to one or two iteration encompassed by the method of claim 1, hence would fall under the anticipation by Tseng's teaching as set forth to map claim 1. And since no full weight is given to the iteratively increased size of the first program therein, the claims as a whole are not in condition for allowance, notably when the language of the claim has to be interpreted in some broad sense, i.e. the above lack of teaching and support not rendering the claim sufficiently novel/credible or reasonably enabled.